

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 8th day of June, 1998

Before:

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Writ Petition No. 9325 of 1993

Sri B.N.Shankarappa,
s/o Narayanappa,
Ex-Pradhan, Mudiyanur Mandal
Panchayat, r/o Devahalli,
Kurudamalai Post,
Mulabagala Taluk, Kolar Dist.

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..Petitioner

(By Sri G. Gangi Reddy, Advocate)

-Vs-

1. The Zilla Parishad,
Kolar District, Kolar,
by its Dy. Secretary;
2. Block Development Officer,
Mulabagal Taluk, Mulbagal;
3. The Administrator,
Mudiyanur Mandal Panchayat,
Mudiyanur, Mulbagal Taluk

..Respondents

(By Sri A. Nagarajappa, AGA, for R2;
R1 and R3 served)

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Writ Petition is filed praying to quash the
impugned order bearing No.CDP.5.CR.495/92-93 dated
16-3-1993 (Annexure-A).

This writ petition coming on for preliminary
hearing in 'B' Group this day, the Court made the
following:-

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ORDER

Sri Nagarajappa, learned AGA, is directed to take notice for respondents.

2. The petitioner claims that he was the Pradhan of the Mudiyanur Mandal Panchayat, Mulabagil taluk and his term expired on 11-2-1992. On the basis of an audit report relating to the said Mandal Panchayat for the year 1991-92, the first respondent has issued a direction dated 16-3-1993 [Annexure 'A'] to the Administrator of the said Mandal Panchayat [third respondent], stating that the petitioner, while holding the office of Pradhan of said Mandal Panchayat, has misappropriated a sum of Rs 11,338.60, realised by the auction of trees of the panchayat, ~~and~~ by not remitting the same to the treasury and further directing initiation of criminal case against him under the provisions of CrPC and report ~~the~~ compliance in that behalf. Feeling aggrieved, the petitioner has filed this petition. Petitioner while admitting the realisation of Rs 11,338.60 by auction of trees, has contended that the same was not misappropriated by him, but was used for the

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purpose authorised by the Mandal Panchayat. He has also contended that such a direction could not and ought not to have been issued without giving him an opportunity to explain the matter. Hence, he has filed this petition and sought quashing of Annexure- 'A'.

3. It is seen from Annexure 'A' that the first respondent has proceeded on the basis that there was misappropriation by the petitioner, merely on the basis of the Audit Report, without hearing the petitioner in the matter. Hence, the appropriate course open for the third respondent or his successor is to issue a notice to the petitioner, calling upon him to explain the non-deposit of Rs 11,338.60 which is the subject matter of Annexure 'A' and giving him an opportunity to show cause in the matter. Thereafter, if the third respondent is satisfied with the explanation, the matter may be closed, under advice to the first respondent. If however the third respondent or his successor is not satisfied with the explanation, it can proceed lodge a criminal complaint and/or to take such action as may be available under law for recovery of amount.

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4. In view of the above this petition is allowed in part Annexure-A is quashed. Liberty is reserved to third respondent to take action as per para (3) above.

Sri Nagarajappa, learned AGA, is permitted to file his memo of appearance within six weeks.

Sd/-
JUDGE

*pjk/uj

